

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

In re:

ASHINC Corporation, et al.,

Debtor.

Chapter 11

Case No. 12-11564 (CSS)

(Jointly Administered)

CATHERINE E. YOUNGMAN, LITIGATION TRUSTEE
FOR ASHINC CORPORATION, ET AL., AS
SUCCESSOR TO THE OFFICIAL COMMITTEE OF
UNSECURED CREDITORS OF ASHINC
CORPORATION, AND ITS AFFILIATED DEBTORS,

Plaintiff,

v.

YUCAIPA AMERICAN ALLIANCE FUND I, LLC,
YUCAIPA AMERICAN MANAGEMENT, LLC,
AMERICAN AIRLINES MASTER FIXED BENEFIT
PENSION PLAN TRUST, AMERICAN PRIVATE
EQUITY PARTNERS II, LP, AUTOMOTIVE
MACHINISTS PENSION TRUST, BOARD OF FIRE
AND POLICE PENSION COMMISSIONERS OF THE
CITY OF LOS ANGELES, CALIFORNIA PUBLIC
EMPLOYEES' RETIREMENT SYSTEM,
CARPENTERS PENSION TRUST FUND FOR
NORTHERN CALIFORNIA, COLLIER PARTNERS 702
LP INCORPORATED, CLOUSE S.A., CONSOLIDATED
RETIREMENT FUND, IAM PRIVATE EQUITY, LLC,
ILGWU DEATH BENEFIT FUND 4, INTERNATIONAL
SIF SICAV SA, LOCALS 302 & 612 OF THE
INTERNATIONAL UNION OF OPERATING
ENGINEERS – EMPLOYERS CONSTRUCTION
INDUSTRY RETIREMENT TRUST, LOS ANGELES
CITY EMPLOYEES' RETIREMENT SYSTEM,
NATIONAL RETIREMENT FUND, NEW MEXICO
STATE INVESTMENT COUNCIL, NEW MEXICO
STATE INVESTMENT COUNCIL LAND GRANT
PERMANENT FUND, NEW MEXICO STATE
INVESTMENT COUNCIL SEVERANCE TAX
PERMANENT FUND, NEW YORK CITY
EMPLOYEES' RETIREMENT SYSTEM, NEW YORK

Adv. Pro. No. 21-51179 (CSS)

CITY FIRE DEPARTMENT PENSION FUND, NEW YORK CITY POLICE PENSION FUND, NORTHEAST CARPENTERS PENSION FUND, PACIFIC COAST ROOFERS PENSION PLAN, SANBA II INVESTMENT AUTHORITY, STATE STREET BANK AND TRUST COMPANY (AS TRUSTEE ON BEHALF OF AMERICAN AIRLINES MASTER FIXED BENEFIT PENSION PLAN TRUST); STEAMSHIP TRADE ASSOCIATION OF BALTIMORE, INC. – INTERNATIONAL LONGSHOREMEN’S ASSOCIATION (AFL- CIO) PENSION FUND, TEACHERS’ RETIREMENT SYSTEM OF THE CITY OF NEW YORK, UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION PENSION PLAN FOR EMPLOYEES, WESTERN CONFERENCE OF TEAMSTERS PENSION TRUST

Defendants.

**LIMITED PARTNER DEFENDANTS’ MOTION
TO DISMISS THE ADVERSARY COMPLAINT**

The group of limited partner defendants (the “LP Defendants”)¹ in the above-captioned adversary proceeding (the “Adversary Proceeding”) hereby move (this “Motion”) for entry of an order substantially in the form attached hereto as **Exhibit A**, pursuant to Rules 9(b), 12(b)(1), 12(b)(2), and 12(b)(6) of the Federal Rules of Civil Procedure, made applicable to this proceeding by Rules 7009 and 7012 of the Federal Rules of Bankruptcy Procedure, and for the reasons set forth in the *Memorandum of Law in Support of the Limited Partner Defendants’*

¹ The LP Defendants are herein defined as American Private Equity Partners II, LP, American Airlines Master Fixed Benefit Pension Plan Trust, California Public Employees’ Retirement System, Carpenters Pension Trust for Northern California, Clouse S.A., acting in respect of its Compartment 11, Collier Partners 702 LP Incorporated, Consolidated Retirement Fund, IAM Private Equity, LLC, ILGWU Death Benefit Fund 4, International SIF SICAV SA, Locals 302 & 612 Of The International Union Of Operating Engineers – Employers Construction Industry Retirement Trust, National Retirement Fund, New Mexico State Investment Council, New Mexico State Investment Council Land Grant Permanent Fund, New Mexico State Investment Council Severance Tax Permanent Fund, New York City Employees’ Retirement System, New York City Fire Department Pension Fund, New York City Police Pension Fund, Northeast Carpenters Pension Fund, Pacific Coast Roofers Pension Plan, Steamship Trade Association of Baltimore, Inc. – International Longshoremen’s Association (AFL-CIO) Pension Fund, Teachers’ Retirement System of the City of New York, Sanba II Investment Company, State Street Bank and Trust Company (as Trustee on behalf of American Airlines Master Fixed Benefit Pension Plan Trust), United Food and Commercial Workers International Union Pension Plan for Employees, and Western Conference of Teamsters Pension Trust.

Motion to Dismiss Adversary Complaint (the “Memorandum”),² the accompanying *Declaration of Michael S. Etkin* and the exhibits attached thereto, the *Declaration of Andrew Hitchon in Support of Collier Partners 702 LP Incorporated’s Motion to Dismiss for Lack of Personal Jurisdiction*, the *Declaration of Evgenia Matveeva in Support of International SIF SICAV SA’s Motion to Dismiss for Lack of Personal Jurisdiction*, the *Declaration of Ahmad Al-Khanji in Support of Limited Partner Sanba II Investment Company’s Motion to Dismiss*, and the *Declaration of Jörg Oster and Lynton Raath in Support of Clouse S.A.’s Motion to Dismiss for Lack of Personal Jurisdiction*, respectfully request that the Court dismiss with prejudice the complaint filed against them in the Adversary Proceeding.³

WHEREFORE, the LP Defendants respectfully request that the Motion be granted and that the Court order such other and further relief as is just and proper.

Dated: June 1, 2022
Wilmington, Delaware

BAYARD, P.A.

/s/ Erin R. Fay
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-and-

² By filing this Motion and the Memorandum, the LP Defendants do not waive any grounds for dismissal of the Complaint (including any claims asserted therein) that are not subject to waiver pursuant to Federal Rule of Civil Procedure 12(h) or other applicable law.

³ As set forth in the Memorandum, under Rule 9013-1(f) of the *Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court For the District of Delaware*, to the extent that any matters in this Adversary Proceeding are heard by the Bankruptcy Court, the LP Defendants do not consent to the Bankruptcy Court entering any final orders and maintain that the Bankruptcy Court lacks the constitutional authority to do so.

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